

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARTIN GUGINO,

Plaintiff,

-vs-

CITY OF BUFFALO,
MAYOR BYRON BROWN,
POLICE OFFICER ROBERT McCABE,
POLICE OFFICER AARON TORGALSKI,
POLICE OFFICER JOHN LOSI,
POLICE COMMISSIONER BYRON C. LOCKWOOD,
DEPUTY POLICE COMMISSIONER JOSEPH GRAMAGLIA,

Defendants.

Examination Before Trial of

JOHN EVANS, taken pursuant to the Federal Rules of Civil
Procedure, in the law offices of LIPSITZ GREEN SCIME CAMBRIA
LLP, 42 Delaware Avenue, Suite 120, Buffalo, New York, taken
on January 12, 2024, commencing at 10:09 A.M., before
NICHOLE WINANS, Notary Public.

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1 APPEARANCES:

2 LIPSITZ GREEN SCIME CAMBRIA LLP,
3 By MELISSA D. WISCHERATH, ESQ.,
4 42 Delaware Avenue,
5 Suite 120,
6 Buffalo, New York 14202,
7 Appearing for the Plaintiff.

8 HODGSON RUSS LLP,
9 By PETER A. SAHASRABUDHE, ESQ.,
10 The Guaranty Building,
11 140 Pearl Street, Suite 100,
12 Buffalo, New York 14202-4040,
13 Appearing for the Defendants.

14 PERSONIUS MELBER, LLP,
15 By RODNEY O. PERSONIUS, ESQ.,
16 2100 Main Place Tower,
17 Buffalo, New York 14202,
18 Appearing for The Witness.

19 PRESENT: Matthew Messing,
20 Legal Videographer

21 (The following stipulations were entered
22 into by all parties.)

23 It is hereby stipulated by and between counsel
for the respective parties that the oath of the
Referee is waived, that filing and certification
of the transcript are waived, and that all
objections, except as to the form of the
questions, are reserved until the time of trial.

1 (Whereupon, a Buffalo Police Department/
2 Buffalo Police Benevolent Association Collective
3 Bargaining Agreement and Supplements was then
4 received and marked as Exhibit 43,

5 a Final and Binding Opinion and Award of
6 Tripartite Arbitration Panel was then received
7 and marked as Exhibit 44,

8 a Subpoena to Testify at a Deposition in a
9 Civil Action John Evans was then received and
10 marked as Exhibit 45,

11 PBA E-mails were then received and marked as
12 Exhibit 46,

13 an October 2021 The City of Buffalo's
14 Untapped Power to Discipline Police Officers was
15 then received and marked as Exhibit 47,

16 a January 9, 2024 Multiple Page
17 Communication to the Common Council was then
18 received and marked as Exhibit 48,

19 a March 23, 2023 Deidre Williams Article was
20 then received and marked as Exhibit 49,

21 PBA Blog Posts "Top 10" were then received
22 and marked as Exhibit 50,

23 a June 5, 2020 Spectrum News Staff Article

1 was then received and marked as Exhibit 51,
2 a March 21, 2023 Buffalo PBA Website was
3 then received and marked as Exhibit 52,
4 an April 7, 2023 Buffalo PBA Website was
5 then received and marked as Exhibit 53,
6 an August 2, 2023 Buffalo PBA Website was
7 then received and marked as Exhibit 54,
8 a February 1, 2023 Buffalo PBA Website was
9 then received and marked as Exhibit 55,
10 a July 22, 2022 Buffalo PBA Website was then
11 received and marked as Exhibit 56,
12 a John Evans Oversight Article was then
13 received and marked as Exhibit 57,
14 a Move On Article was then received and
15 marked as Exhibit 58, and
16 a 1949 Charter was then received and marked
17 as Exhibit 59, for identification.)

18
19 THE VIDEOGRAPHER: Okay. We are now on the record.
20 My name is Matt Messing with WNY Legal Video.
21 Today's date is January 12th, 2024, and the time
22 on the video monitor is ten-o-nine. We are here
23 to take the video recorded testimony of John

1 Evans, in the matter of Martin Gugino versus the
2 City of Buffalo, et al.

3 The court reporter today is Nichole Winans
4 from Sue Ann Simonin Court Reporting. Will all
5 counsel introduce themselves for the record, and
6 the reporter will then swear in the witness.

7 MS. WISCHERATH: Good morning. Melissa Wischerath of
8 Lipsitz Green, on behalf of Plaintiff, Martin
9 Gugino.

10 MR. SAHASRABUDHE: Good morning. Peter Sahasrabudhe
11 from Hodgson Russ, We represent the City of
12 Buffalo and the City related Defendants,
13 including the police officers.

14 MR. PERSONIUS: Rod Personius from Personius Melber,
15 and I represent John Evans.

16 THE REPORTER: Usual stipulations?

17 MS. WISCHERATH: So you're here pursuant to a
18 non-party Subpoena, so, Mr. Evans, you have a
19 right to the copy of the transcript to review,
20 read and sign, if that's something that you'd
21 like to say on the record now or if you want to
22 preserve that until the end, you can let us know,
23 but we're happy to provide you a copy of your

1 deposition transcript.

2 JOHN EVANS: Sure.

3 MR. PERSONIUS: I think he'd like to review it.

4 JOHN EVANS: Sure.

5

6 J O H N E V A N S,

7 68 Court Street, Buffalo, New York 14202,

8 after being duly called and sworn,

9 testified as follows:

10

11 EXAMINATION BY MS. WISCHERATH:

12

13 Q. Good morning, Mr. Evans. We met informally
14 before we got on the record today. My name is
15 Melissa Wischerath, and there's a couple of
16 ground rules. If you don't understand a question
17 I ask, just let me know and I'm happy to rephrase
18 it, restate it, things like that. Okay?

19 A. Great.

20 Q. And if you need a break at any time, again, it's
21 not a test, as long as there's not a question
22 pending, we can take bathroom breaks, lunch hour,
23 that sort of thing, just let us know. Okay?

1 A. Sounds good.

2 Q. And the court reporter is doing everything --
3 doing a lot of work today, so in conversations we
4 have a tendency to nod or say um-hum, for her
5 sake, we're going to need a verbal response, so I
6 may say I see you nodding, was that a yes, was
7 that a no.

8 A. Understood.

9 Q. And then lastly, we have a tendency to start
10 talking over each other, so you know where I'm
11 going before I finish my question, but to make
12 her life easier, if you could just wait until I
13 finish. Okay?

14 A. Okay.

15 Q. Other than talking to your attorney, was there
16 anybody that you spoke with about your deposition
17 today?

18 A. No.

19 Q. What about documents, did you review anything in
20 preparation for your deposition today?

21 A. The complaint.

22 Q. And the complaint, do you mean the actual
23 lawsuit?

1 A. If that's what it's referred as.

2 Q. Okay. Was it a fifty-page document --

3 A. Yes.

4 Q. -- that had claims or causes of action that were
5 made by Plaintiff Gugino against the City of
6 Buffalo --

7 A. Yes.

8 Q. -- and others? Okay.

9 MR. PERSONIUS: And I'm seeing it happening, you got
10 to let her finish her question before you answer,
11 please.

12 THE WITNESS: Understood.

13 BY MS. WISCHERATH:

14 Q. And had you read that complaint before?

15 A. Before when?

16 Q. Before you reviewed it today in preparation for
17 your deposition.

18 A. No.

19 Q. Okay. So something you looked at before you came
20 here?

21 A. Correct.

22 Q. Anything else?

23 A. No.

1 Q. Okay. If you don't mind, turning over to, we
2 pre-marked exhibits, so there should be a tab in
3 your binder that says 55 -- 45. And I'll just
4 represent to you, this is the Subpoena that our
5 office served on you in order to appear for your
6 deposition testimony today. Have you reviewed
7 this before?

8 A. I must have saw it at some point.

9 Q. Okay. And if you don't mind just flipping to the
10 last page, there was an exhibit A.

11 A. Okay.

12 Q. Did you look for any of these documents in order
13 to either provide to us or bring with you today?

14 A. I didn't bring anything today.

15 Q. Were you -- at any point in time did you look for
16 e-mails or texts or media that you had that was
17 either issued or recorded because of the incident
18 involving Mr. Gugino?

19 A. I don't know. Did I send anything back to you?

20 Q. I'm -- did you get that to your lawyers to send
21 to us?

22 A. I don't remember.

23 Q. Okay. I just want to ask some questions about

1 your background. What is your job title?

2 A. The president of Buffalo PBA.

3 Q. And what's the Buffalo PBA?

4 A. The police union for the City of Buffalo police
5 officers.

6 Q. And how long have you been the president?

7 A. I think six years.

8 Q. What is your job description? You don't need to
9 give me the long story, but in a couple words,
10 what is the job you do as president of the
11 Buffalo PBA?

12 A. Represent the officers of the union, try to
13 enforce the articles of the contract.

14 Q. And the officers of the union, would those be
15 members of the Buffalo Police Department?

16 A. Yes.

17 Q. Okay. Anybody else or is it really just --

18 A. Just strictly police officers.

19 Q. Just police officers that work for the City of
20 Buffalo, true?

21 A. Well, police officers, detectives, detective
22 sergeants, captains, inspectors.

23 Q. So law enforcement for the City of Buffalo?

1 A. Correct.

2 Q. Basically you don't represent -- if there's an
3 officer that's with the Amherst PD, they're not
4 part of your organization, right?

5 A. Correct.

6 Q. Okay. And when you say enforce the contract,
7 what contract are you talking about?

8 A. The contract between the union and the City.

9 Q. Now prior to being president, did you have --
10 what was your job title before that?

11 A. I was vice president.

12 Q. How long were you vice president of the PBA?

13 A. Four years-ish.

14 Q. Was your job duties different than they are now,
15 meaning what was the difference between vice
16 president and president?

17 A. Within the office, your duties are more
18 concentrated on grievances.

19 Q. What's a grievance?

20 A. Grievance is an instance where the City violated
21 the contract.

22 Q. Do you still have to do that in your capacity as
23 president?

1 A. Occasionally.

2 Q. Okay. But more your time is spent dealing with
3 the actual enforcement of the contract than the
4 enforcement of grievances?

5 A. Right.

6 Q. Okay. Now before you were vice president, what
7 title did you hold?

8 A. Second vice president.

9 Q. How long were you second vice president?

10 A. I don't remember. A year and a half maybe.

11 Q. And what was the difference between your job
12 duties as vice president and second vice
13 president?

14 A. Again, internally you were more concerned with
15 the -- I want to say the safety issues related to
16 the duties of the job.

17 Q. What do you mean by that? I just don't know what
18 you mean by safety issues.

19 A. There was a mold issue at a district, so we
20 called in PESH, and a litany of other agencies.

21 Q. Not to put words in your mouth, but just more
22 like day-to-day issues that were affecting the
23 members?

1 A. Well, vehicles, you know, you try to keep track
2 of the fleet, and, you know, I don't know, things
3 like that.

4 Q. Okay. And did you have a title before the second
5 vice president title within the PBA?

6 A. I was a recording secretary.

7 Q. Recording secretary?

8 A. Correct.

9 Q. What was that job?

10 A. You recorded the meeting minutes, that was your
11 primary function.

12 Q. What do you mean, what meeting, like was it an
13 annual meeting or --

14 A. Monthly, we had monthly PBA union meetings.

15 Q. And how long were you recording secretary?

16 A. Two years I think.

17 Q. Did you have a title before recording secretary?

18 A. No.

19 Q. Okay. So recording secretary is the first
20 position you held within the PBA?

21 A. Correct.

22 Q. What year do you think you got the job within PBA
23 as recording secretary?

1 A. 2012.

2 Q. So from 2012 to 2023, you've been employed by the
3 PBA, is that true?

4 A. Correct.

5 Q. Where did you work before your position as
6 recording secretary?

7 A. In the field?

8 Q. Okay. In the field. And where was that for?

9 A. I worked in --

10 Q. Who was your employer?

11 A. I worked in various districts throughout the
12 City.

13 Q. Was your employer the City of Buffalo?

14 A. Correct.

15 Q. Today is your employer the City of Buffalo or is
16 it the PBA?

17 A. Both.

18 Q. What do you mean by that?

19 A. I get paid from the City of Buffalo, I also get
20 paid from the PBA.

21 Q. Can you explain that, so are you currently a
22 salaried employee of the City of Buffalo and a
23 salaried employee of the PBA?

1 A. Yes.

2 Q. So you have two jobs?

3 A. I'm on full release from my position as a City
4 officer.

5 Q. When did you get the full release from your
6 position as a City officer?

7 A. When I became the vice president.

8 Q. What year was that?

9 A. I'm not sure.

10 Q. But sometime after 2012?

11 A. Maybe '14, '15-ish. Again, I'm not sure.

12 Q. Now was this also true when your first position
13 as recording secretary, did you have a dual
14 employment where you were paid by the PBA and you
15 were also paid by the City?

16 A. It was as needed, as far as the PBA, you got
17 release days when there was an arbitration or
18 whatever the issue was or event.

19 Q. So as recording secretary, when you say release
20 days, the PBA would pick up your bill for the day
21 and reimburse the City or something like that or
22 what do you mean?

23 A. No. You were granted release days, the PBA -- we

1 have secretaries, and they would, they send
2 releases letters to the commissioner to say on
3 January 11th you'd be attending a deposition, and
4 that would constitute your workday that day, so
5 you did PBA function that day versus your job in
6 the field.

7 Q. Okay. But so when you were a recording
8 secretary, was your sole employer the City of
9 Buffalo? Meaning, you weren't getting paid by
10 the PBA or were you getting paid by the PBA?

11 A. Yes. We were getting paid by the PBA.

12 Q. Okay. And that was salary or you said as needed
13 like a --

14 A. Salary. But the release days were as needed.

15 Q. So you were mainly working -- in your job as a
16 recording secretary, were you mainly working in
17 the field as a Buffalo police officer and then
18 having these sporadic release days or how did
19 that look on a day to day?

20 A. Going off memory, you worked -- just say I would
21 work two days a week in the car, so to speak, and
22 then two days a week in the office, if that's,
23 you know, the way it fell.

1 Q. So how long -- when did you first become an
2 employee of the City of Buffalo as a police
3 officer or in some other capacity?

4 A. January 25th, 2001.

5 Q. January 25th, 2001 was your first probationary
6 period as a Buffalo police officers?

7 A. I was sworn in that day, correct.

8 Q. And did you attend the police academy before
9 that?

10 A. No. It started that day.

11 Q. Okay. So when you were sworn in, you got sworn
12 in and your first task was to go to police
13 academy?

14 A. Correct.

15 Q. Did you successfully complete the police academy?

16 A. Yes.

17 Q. How long was that, how long did that process
18 take?

19 A. I don't know if it's twenty-five weeks or
20 thereabouts.

21 Q. What was your background going in as a police
22 officer, educationally, did you have a degree
23 or --

1 A. I had some college, I went to Buff State for a
2 few years.

3 Q. Were you doing like criminal justice stuff at
4 Buff State or just --

5 A. Some, yeah. History, political science.

6 Q. Are you from Western New York?

7 A. Buffalo.

8 Q. You were born here?

9 A. Lackawanna.

10 Q. Where did you go to high school?

11 A. Timon.

12 Q. Okay. I'm from Buffalo, so I know what that
13 means. Okay. So twenty-five weeks of police
14 academy, what was your first position when you
15 got off the academy?

16 A. Police officer assigned to actually Charlie
17 District.

18 Q. Which is C, as in cat?

19 A. Correct.

20 Q. How high up in the ranks did you progress before
21 you started working in a capacity for the PBA?

22 A. I'm a police officer.

23 Q. Meaning you didn't take any more senior positions

1 within the City of Buffalo?

2 A. No.

3 Q. Is there a reason why you didn't?

4 MR. PERSONIUS: Object to the form.

5 THE WITNESS: Never cared to.

6 BY MS. WISCHERATH:

7 Q. So as of your position as vice president within
8 the PBA, are you currently one hundred percent
9 full-time working on union activities?

10 A. Correct.

11 Q. Okay. And prior, when I think in 2012 when you
12 started working within the PBA as recording
13 secretary, there was more of a split where you
14 were about maybe fifty/fifty union activities
15 versus actual police work, is that fair to say?

16 A. Correct.

17 Q. Now you gave an office of 68 Court Street, is
18 that your office?

19 A. Correct.

20 Q. What is that office?

21 A. It's the PBA office.

22 Q. Do you guys have like a physical office space?

23 A. Yes.

1 Q. And do you have your own office within that
2 office?

3 A. Correct.

4 Q. And is that located within headquarters?

5 A. Yes.

6 Q. Where -- do you guys have your own floor or how
7 do they work that out?

8 A. It's suite 100.

9 Q. Okay. There's a suite within the headquarters
10 that's dedicated for PBA space and offices --

11 A. Right.

12 Q. -- true?

13 A. Correct.

14 Q. Okay. How long has that been the case, where
15 the --

16 A. Since --

17 Q. Hang on. How long has the PBA offices been
18 located within the City headquarters for police?

19 A. I don't know the -- I don't know that answer.

20 Q. Since you've been around has that always been the
21 case?

22 A. Yes.

23 Q. So at least since 2012 the PBA offices were

1 located within headquarters for the Buffalo
2 Police?

3 A. Yeah. We were at 74 Franklin Street though prior
4 to 68 Court.

5 Q. Got it. Now I'm going to show you a very large
6 exhibit, if you could flip to Exhibit -- we
7 previously marked it as 43, it's going to be the
8 first document that's approximately four hundred
9 and forty-four pages. I'll just represent to you
10 that we were -- we received this pursuant to a
11 Subpoena our office served on the PBA. We asked
12 for a copy of the collective bargaining agreement
13 and any supplements between the City and the PBA,
14 and this is what we got. Have you -- are you
15 familiar with this document?

16 A. Yes. Yes.

17 Q. Do you know how many pages it is off the top of
18 your head?

19 A. No.

20 Q. Does it sound about right, four hundred and
21 forty-four pages?

22 MR. PERSONIUS: Don't guess.

23 THE WITNESS: I don't know.

1 BY MS. WISCHERATH:

2 Q. Okay. Now, how do you personally, I know you
3 said one of your main job duties is enforcement
4 of the contract, and by that we're talking
5 specifically about the large stack of paper at
6 Exhibit 43, how do you personally have a copy of
7 this? Do you have a hard copy, do you have an
8 electronic copy, is it in the office, what does
9 your contract copy look like?

10 MR. PERSONIUS: Object to the form.

11 THE WITNESS: Both.

12 BY MS. WISCHERATH:

13 Q. Okay. So you have a hard copy and an electronic
14 copy in your office of the contract between the
15 PBA and the City, true?

16 A. Correct.

17 Q. And would you agree with me, if it's something
18 that's been cobbled together over decades, and
19 there's many different -- within this contract
20 are many different agreements that have taken
21 place over time, true?

22 A. True.

23 Q. Okay. And the most recent contract I understand

1 was just submitted to the common council earlier
2 this week, there is a tentative agreement, is
3 that true?

4 A. Correct.

5 Q. And so, if I'm understanding, based on my review
6 of the contract, is that agreements get signed
7 between the City and the PBA, and then they get
8 kind of incorporated into this stack of the
9 contract, as we're looking at at Exhibit 43,
10 true?

11 A. Correct.

12 Q. And so the tentative contract that's pending in
13 front of the City right now, we're always kind of
14 looking behind, right, so that, the timeline for
15 that tentative contract is what?

16 MR. PERSONIUS: Object to the form.

17 BY MS. WISCHERATH:

18 Q. What is that in effect for, even though it might
19 be approved in 2024, what period of time would
20 that contract cover?

21 MR. PERSONIUS: Object to the form.

22 THE WITNESS: July 1st of 2021 until June 30th, 2025.

23 BY MS. WISCHERATH:

1 Q. Now as far as the contract process generally, how
2 does that work, how does the City and the PBA get
3 to the table to talk or discuss the contract that
4 is in place between the two of them?

5 MR. PERSONIUS: Object to the form.

6 THE WITNESS: Usually in the last six months of a
7 term, would sit down with corporation council and
8 discuss a future contract.

9 BY MS. WISCHERATH:

10 Q. And when you say we, do you mean the PBA or
11 something else?

12 A. Sometimes, sometimes attorneys, PBA attorneys
13 would be present as well.

14 Q. So at the earliest stage in the beginning, it's
15 usually members -- representatives of the PBA,
16 the City, and then attorneys for the City and PBA
17 will talk about the contract, is that fair to
18 say?

19 A. Yes.

20 Q. And then what happens, has it ever been like you
21 guys figured it out in those early kind of
22 conversations or is there a next step that
23 happens?

1 MR. PERSONIUS: Object to form.

2 THE WITNESS: I don't know the exact history of the
3 -- we did have a -- from the '09 to '19, we had a
4 contract, and then from '19 to '21 we had an
5 arbitration award, and '21 to currently, which is
6 the tentative that's at common council as we
7 speak.

8 BY MS. WISCHERATH:

9 Q. And the current contract that was negotiated, it
10 sounds like there was an impasse declared at some
11 point, is that true?

12 A. Correct.

13 Q. What does that mean?

14 A. We couldn't come to terms, so a mediator then
15 becomes involved through New York State, through
16 PERB, and they mediate the negotiation from that
17 point.

18 Q. Okay. So at least in the most recent contract,
19 that was submitted I think January of 2024, there
20 were some early conversations, an impasse was
21 declared, and then a mediator got involved, and
22 as a result of that mediation, the parties
23 reached a tentative agreement that is now pending

1 in front of the council for approval, is that
2 fair to say?

3 A. Correct.

4 Q. And just because it happened that way this time,
5 doesn't mean it always happens that way as far as
6 contract negotiations between the City and the
7 PBA, true?

8 A. True.

9 Q. But that's just one of the ways that it can
10 happen, right?

11 A. Right.

12 Q. And I think you mentioned sometimes it can happen
13 through an arbitration, right?

14 A. Correct.

15 Q. So basically if there's not an agreement between
16 the parties, it can proceed to an arbitration and
17 then the parties -- the controlling document
18 would be the arbitration, right?

19 A. Correct.

20 Q. It's resolved through arbitration --

21 A. Correct.

22 Q. -- not discussions through the parties? But
23 those are basically the two paths, right, there's

1 either parties agree to it or there's an
2 arbitration, and an arbitrator or panel
3 decides --

4 A. Correct.

5 Q. -- what's going to happen, true?

6 A. Yes.

7 Q. Okay. How familiar are you with the contract
8 that is in effect between the PBA and the City?
9 I mean, would you say you're very familiar,
10 somewhat familiar, not at all?

11 MR. PERSONIUS: Object to form.

12 THE WITNESS: Somewhat familiar.

13 BY MS. WISCHERATH:

14 Q. And have you -- I know you said you have copies
15 of it. Have you read copies of the contract
16 that's in place between the City and the PBA?

17 MR. PERSONIUS: Object to form.

18 THE WITNESS: Yeah. Different parts.

19 BY MS. WISCHERATH:

20 Q. Meaning, you haven't read the thing in its
21 entirety, but you're familiar with certain parts
22 of it or --

23 MR. PERSONIUS: Object to form.

1 THE WITNESS: Yeah. I've never sat down and read it
2 cover to cover. You just apply whatever
3 violation is relevant to what chapter and fill
4 out the grievance, that's essentially it.

5 BY MS. WISCHERATH:

6 Q. Okay. You may not have read it like a book,
7 cover to cover, but do you think you've gotten
8 through the whole book or are there pieces that
9 you haven't read?

10 A. I've likely read the entire thing at some point
11 in the last twelve years.

12 Q. Now within the PBA, are you like the contract
13 guy, like are you the one that knows the most
14 about it or are there other people that have
15 greater knowledge about it?

16 MR. PERSONIUS: Object to form.

17 THE WITNESS: Just because experience-wise, I'm the
18 longest tenured current executive board member,
19 so I may have the most knowledge of it.

20 BY MS. WISCHERATH:

21 Q. Now you said you're a board member, are you --
22 maybe I need to understand a little bit about the
23 PBA. Are you an employee of the PBA and a board

1 member of the PBA?

2 A. Well, the executive board consists of the
3 recording secretary, treasurer, second vice
4 president, first vice president and president.

5 Q. I think I missed one. You said recording
6 secretary, second vice president, vice
7 president --

8 A. Treasurer.

9 Q. Treasurer. Okay. So does the PBA have employees
10 that are not board members?

11 A. We have two secretaries.

12 Q. Anybody else, is that it?

13 A. No.

14 Q. So it's the board and two secretaries make up the
15 employment of the PBA?

16 A. Correct.

17 Q. Now who pays the salaries of the secretaries, is
18 that a PBA expense or a City expense?

19 A. PBA.

20 Q. And then from vice president -- I guess vice
21 president and president, those are -- those
22 salaries are paid by the City and the PBA, true?
23 There's two different -- if you're holding the

1 title president, you're getting paid from the
2 City as a salary, and you're also getting paid
3 from the PBA as a salary, true?

4 A. Correct.

5 Q. Is that true also as vice president?

6 A. Yes.

7 Q. What about treasurer?

8 A. Yes.

9 Q. What about second vice president?

10 A. Yes.

11 Q. What about recording secretary?

12 A. Correct. Yes.

13 Q. Do you get a raise from your City employment when
14 you become an employee of the PBA or is that just
15 the regular contract would be in place?

16 MR. SAHASRABUDHE: Form.

17 THE WITNESS: I get my police salary from the City,
18 and then I get a stipend from the PBA as well.

19 BY MS. WISCHERATH:

20 Q. So is like all the -- if the City employees get a
21 raise -- your employment as the president, does
22 that just fall under the standard contract then
23 of the City, you're treated like any other police

1 officer as far as raises or salaries and things
2 like that, is that true?

3 A. Correct.

4 Q. Okay. And then the stipend, is that like
5 discretionary or is there like an actual set
6 figure for each?

7 A. Set figure.

8 Q. Okay. And does that money come out of the member
9 dues?

10 A. Correct.

11 Q. And is Buffalo, is the City of Buffalo Police
12 Department member dues, are those voluntary or
13 mandatory, does everyone have to put in or can
14 you choose to put in?

15 A. You can choose.

16 Q. Do you know what percentage is a member of the
17 PBA of the Buffalo Police?

18 A. I'm sorry?

19 Q. Like how many police officers are members of the
20 PBA?

21 A. Seven hundred and twenty-six currently.

22 Q. Is that almost all of them, like how many --

23 A. There's one that isn't.

1 Q. One that isn't. Okay. Now is it fair to say
2 that you're somebody that isn't afraid to ask
3 public officials or the public for assistance for
4 the PBA? So if the PBA needs more cars, you're
5 going to go out there and you're going to say we
6 need more cars, is that a fair characterization?

7 MR. PERSONIUS: Object to the form.

8 THE WITNESS: Yes.

9 BY MS. WISCHERATH:

10 Q. Now there's a couple of things in the last couple
11 years that you've been advocating for on behalf
12 of the PBA from the City. Do you know what I'm
13 referring to?

14 MR. PERSONIUS: Object to form. Don't guess.

15 BY MS. WISCHERATH:

16 Q. You can say no.

17 A. No.

18 Q. Okay. So specifically, you've been advocating
19 for cars, supervision and training. Does that
20 ring a bell to you that you've been asking for
21 the City to get more police vehicles, do more
22 training, and better supervision for PBA members?

23 A. The training and the vehicles, I guess. I don't

1 recall supervision issues though.

2 Q. Okay. What is it about the vehicles that you
3 feel is not great right now for PBA members?

4 MR. PERSONIUS: Object to form.

5 THE WITNESS: They don't have enough.

6 BY MS. WISCHERATH:

7 Q. And by that, you mean like the actual number,
8 like you want just more?

9 A. Yes.

10 Q. Do you have a number of vehicles that you're
11 like, this is the number we should have, here's
12 where we're at?

13 A. I would like there to be twenty vehicles per
14 district.

15 Q. Do you know what they currently have?

16 A. It fluctuates, but six to eight.

17 MR. PERSONIUS: I want to note for the record, this
18 type of question is of concern. We had lengthy
19 e-mail exchanges over the past six weeks about
20 the Subpoena that was issued to Mr. Evans and
21 whether it was in his official capacity, in which
22 case, we are entitled to a notice of the subjects
23 to be covered pursuant to Federal Rules of Civil

1 Procedure 30(b)(6). I was informed earlier this
2 week that we would not get that notice and that
3 the reason was because Mr. Evans was being
4 subpoenaed to testify in his individual, not his
5 official capacity, and my concern is that the
6 line of questioning that we're covering now is
7 getting into his official capacity, what he does
8 for the PBA, what his aims are, I see that as
9 official, not personal. So I just want to make
10 that observation, and as we proceed, if I get to
11 a point where I think they are questions that go
12 to his official capacity, I'll instruct him not
13 to answer, but I just want to note it for the
14 record.

15 MS. WISCHERATH: Okay. So there was a question
16 pending -- did we get the answer on that?

17 (Whereupon, the above-requested answer was
18 then read back by the reporter.)

19 BY MS. WISCHERATH:

20 Q. Now what about training, what is it that you feel
21 could be improved or is lacking as far as
22 training for the PBA members?

23 MR. PERSONIUS: And again, this is in that same line

1 of questioning, that, unless I'm mistaken, this
2 is talking about what Mr. Evans does in his
3 official capacity, and I see that going beyond
4 the scope of a Subpoena that's directed to him in
5 his individual capacity. And if you want to go
6 off the record and talk about it, we can, but
7 that's my concern.

8 BY MS. WISCHERATH:

9 Q. You can answer. Do you want me to read the
10 question back?

11 A. Well, firearms training I believe is lacking. We
12 currently only have to qualify once a year, I
13 don't think that's adequate or sufficient.

14 Q. What else?

15 MR. PERSONIUS: Object to form.

16 THE WITNESS: That's my primary concern.

17 BY MS. WISCHERATH:

18 Q. What about your secondary concerns, what are
19 those about training?

20 MR. PERSONIUS: Object to the form.

21 THE WITNESS: Nothing comes to mind, sorry.

22 BY MS. WISCHERATH:

23 Q. What about the grievance that the -- the PBA

1 filed a grievance on the issue of training
2 against the City, is that true?

3 A. Could you be more specific? I don't recall.

4 Q. Isn't there currently a grievance pending by the
5 PBA?

6 A. Regarding training?

7 Q. Yes.

8 A. Not that I'm aware of.

9 Q. So regarding the firearms training, do you want
10 to see a higher frequency, so that it's not just
11 going on once a year, that it be, maybe, what, do
12 you have a number? Do you want it to be like
13 biannual, quarterly?

14 A. Quarterly.

15 MS. WISCHERATH: Sorry. Was there just a note
16 handed?

17 MR. PERSONIUS: Yes. You can read it into the
18 record.

19 THE WITNESS: I do not have the authority in my
20 individual capacity to respond to your question.

21 MS. WISCHERATH: Did you type that out, Mr.
22 Personius?

23 MR. PERSONIUS: I did.

1 MS. WISCHERATH: And you're going to hand that to him
2 when --

3 MR. PERSONIUS: If you ask questions that in my
4 judgment call upon him to testify in his official
5 capacity as president of the union, such as what
6 his goals are for the union, yes. I will pass
7 him that note, and he will read it. He'll answer
8 questions, as much as he can, that deal with his
9 recollection, but when you ask a question that's
10 talking about what his goals are as president of
11 the union, that goes to his official capacity as
12 president of the union, and I don't think it's
13 appropriate. That's what I was trying to say
14 before, and that's why I prepared this card,
15 because I was concerned you might get into these
16 types of questions. You can mark it if you'd
17 like to.

18 MS. WISCHERATH: Yes. Let's go ahead and mark it,
19 Exhibit --

20 MR. PERSONIUS: Do you want to make a copy and mark
21 it or how do you want to do it?

22 MS. WISCHERATH: We can just mark it and then we'll
23 make a copy after. What are we up to, 60?

1 MR. PERSONIUS: And I apologize, I apologize for
2 doing this. I tried as best I could through
3 e-mails over the past six weeks to avoid this
4 problem, and we can mark the e-mail thread if
5 you'd like to. I don't like doing this, but this
6 is where we end up, and I'm sorry.

7 MS. WISCHERATH: So for the record, you're intending
8 to just instruct him not to answer, and continue
9 with speaking objections on the record for --

10 MR. PERSONIUS: I'm not putting speaking objections
11 on the record. I'm explaining what I understand,
12 based on your last e-mail, to be the capacity in
13 which you have subpoenaed Mr. Evans, and it's in
14 his individual not his official capacity.

15 We could have avoided this if you simply
16 would have told me what subjects you were going
17 to cover, you declined to do it. You made it
18 clear he's here in his individual capacity, and
19 if you ask questions that in my judgment are
20 directed to his official duties, such as what are
21 your plans for the future, I'm going to direct
22 him not to answer. I will try to limit it as
23 much as I can.

1 MS. WISCHERATH: So I'm sure you're familiar with
2 Foschio's rules.

3 MR. PERSONIUS: Yes.

4 MS. WISCHERATH: And I'm sure you're familiar with
5 the difference between a 30(b)(6) and an
6 individual deposition.

7 MR. PERSONIUS: Yes.

8 MS. WISCHERATH: So there's no limitation of an
9 official -- I can ask him any questions I want as
10 an individual. If I want to bind the
11 corporation, the PBA, about something, that's the
12 difference. So I don't know why you're creating
13 your own legal interpretation of what can occur
14 at a deposition, so I think we may need to get
15 the Judge involved.

16 MR. PERSONIUS: If we do, we do. I tried to avoid
17 it, Melissa, and all it took was to acknowledge
18 that he was being subpoenaed in his official
19 capacity, and you declined to do that.

20 MS. WISCHERATH: I didn't Subpoena a representative
21 of the PBA as a 30(b)(6), I subpoenaed Mr. Evans
22 to FRCP 45.

23 MR. PERSONIUS: Doesn't the Subpoena refer to him as

1 the president of the PBA?

2 MS. WISCHERATH: Yes. That was previously marked.

3 MR. PERSONIUS: Right. And to me, that's official
4 capacity, but you say no. You say he's here
5 individually.

6 MS. WISCHERATH: I don't think that's even a legal
7 term of art, but I guess we're going to have the
8 Judge -- let's just take a break, and I'm going
9 to come back and decide if we're going to
10 continue or -- give me one minute. Because if we
11 do break, have to make a motion, we're going to
12 have to seek costs and --

13 MR. PERSONIUS: We can just call the Judge, you don't
14 need to make a motion. We can call the Judge and
15 discuss it if you wish.

16 MS. WISCHERATH: I think it's important for him to
17 have the transcript. So let me take a break and
18 I'll confer with my partner on the file, and then
19 let you know how we're going to proceed.

20 THE VIDEOGRAPHER: Going off record, time is
21 ten-fifty-two.

22 (Whereupon, a short recess was then taken.)

23

1 (Whereupon, a Personius Note Card for Evans
2 was then received and marked as Exhibit 60, and
3 Judge Foschio's Guidelines for Discovery
4 Depositions were then received and marked as
5 Exhibit 61, for identification.)
6

7 THE VIDEOGRAPHER: We're back on the record, time is
8 eleven-thirteen.

9 MS. WISCHERATH: Okay. So prior to the break, we
10 marked as an Exhibit 60, which was a typed out
11 three-by-five note card that said, quote, I do
12 not have authority in my individual capacity to
13 respond to your question, period, end quote. And
14 that card was handed to the witness, Mr. Evans,
15 by his attorney. And a discussion was had that
16 stated that certain questions this card would be
17 routinely handed to him if there was an
18 instruction not to answer provided by counsel.

19 We took a break, and since that break I
20 marked as Exhibit 61, which is the Foschio
21 guidelines for discovery depositions, and I
22 requested that Mr. Personius review it and make a
23 decision as to how he wants to proceed today. We

1 believe the Foschio rules are in effect and need
2 to be followed, and to the extent that he intends
3 to keep suggesting answers to the witness or
4 handing note cards with answers to the witness,
5 that we will not be able to proceed and we're
6 going to need to get the Court's -- a Court
7 ruling related to this conduct, and we would also
8 seek costs and fees for what we perceive to be
9 deposition obstruction in clear violation of the
10 Foschio rules. That's my statement. I know that
11 you're going to respond.

12 MR. PERSONIUS: I was provided -- well, first of all,
13 let's go back. I had mentioned earlier that
14 there had been an e-mail thread between me and
15 Ms. Wischerath for the last two months, month and
16 a half, I have the thread here, it -- my
17 participation in the communication began on
18 December 20, 2023 at five-o-six p.m., and the
19 last communication that's part of the thread was
20 January 10, 2024 at nine-o-six a.m., in which Ms.
21 Wischerath confirmed that Mr. Evans was being
22 called, quote, yes, as an individual, and not as
23 a representative of the PBA, close quote, and

1 this was a by-product of a back and forth between
2 us on whether or not Ms. Wischerath and Mr.
3 Weisbeck would provide us with appropriate
4 30(b)(6) notice as to the subject matter of the
5 deposition, and the reason for that request is
6 because the Subpoena to testify in this case, as
7 I understand it, is the one we're talking about
8 is dated May 27, 2021, and it's directed to
9 president John Evans, Buffalo Police Benevolent
10 Association. And I further indicated in the
11 e-mail thread that we didn't need to have a
12 formal 30(b)(6) notice, we just needed the
13 courtesy, as a non-party, to have some
14 understanding of what the subject matter of the
15 deposition would be as it related to Mr. Evans,
16 whether individually or in his official capacity.

17 We wanted to do this in a courteous fashion,
18 to avoid exactly the problem that we're
19 confronted with right now, because I am fully
20 aware what Magistrate Judge Foschio's guidelines
21 for discovery depositions, they've been in effect
22 for decades. I was provided with a copy of those
23 guidelines, they're marked Exhibit 61 for this

1 deposition, and after reading them, I had some
2 thoughts, and I said to Ms. Wischerath, may I
3 have an opportunity to review these guidelines
4 with Mr. Evans so that he can listen to what my
5 recommendations are and he can make a decision on
6 how he wants to handle this issue. Ms.
7 Wischerath responded that no, she would not give
8 me an opportunity to talk to my client about
9 Magistrate Judge Foschio's guidelines and what my
10 thoughts were regarding the effect of those
11 guidelines on this examination. So absent the
12 opportunity to consult with my client before we
13 proceed, if, on that basis, Ms. Wischerath
14 insists on stopping the deposition now and filing
15 a motion, we're prepared to respond.

16 MS. WISCHERATH: Maybe I misheard you. You're
17 prepared to continue and follow the Foschio rules
18 or you're saying we need to stop and get an
19 enforcement of the rules?

20 MR. PERSONIUS: Well, there was a third point that
21 I'm sorry I didn't make clear. That is, before
22 you insisted on going back on the record, I had
23 indicated after reading the guidelines that I

1 wanted an opportunity to privately consult with
2 Mr. Evans regarding those guidelines, and what my
3 recommendation was on how we proceed, and you
4 haven't permitted me the opportunity to do that,
5 which is fine, and as far as I'm concerned, go
6 ahead and file your motion. I'm happy to respond
7 to it on the basis of the record.

8 MS. WISCHERATH: And the reason for that is it's
9 clearly spelled out in the Foschio rules that
10 there aren't to be conferences --

11 MR. PERSONIUS: Fine.

12 MS. WISCHERATH: -- with your client --

13 MR. PERSONIUS: Fine. If you interpret those that
14 way, then fine. Go ahead and file your motion.

15 MS. WISCHERATH: Lastly, I'll just say I think that
16 you have a fundamental misunderstanding of the
17 difference between an FRCP 45 and a 30(b)(6)
18 Subpoena, it's a legal issue and I just -- I
19 don't agree with your conflation of the two, but
20 you did have an opportunity to clarify that or
21 move before today, you said you were going to and
22 you didn't, so he showed up, we have questions
23 prepared, and now we're going to have to

1 terminate it to get a court order.

2 MR. PERSONIUS: I'm sorry. When you say I had an
3 opportunity to clarify, what are you referring
4 to?

5 MS. WISCHERATH: You wrote that you were going to get
6 the Court's assistance on this in advance of
7 today to determine whether or not we had to
8 convert our Subpoena into a 30(b)(6) or not.

9 MR. PERSONIUS: Well, then when you responded and
10 indicated very clearly that he was being
11 subpoenaed in his individual, not as a
12 representative of the PBA, I didn't think that
13 was necessary.

14 MS. WISCHERATH: And the Subpoena speaks for itself,
15 it's Exhibit 45, and we will involve the Court.

16 Unless, Peter, do you have anything you need
17 to add?

18 MR. SAHASRABUDHE: No. Nothing to add.

19 MS. WISCHERATH: Off the record.

20 THE VIDEOGRAPHER: Going off the record, time is
21 eleven-nineteen.

22 (Discussion off the record.)

23 (The remaining proceedings were not video

1 recorded.)

2 MS. WISCHERATH: You know what, I'd like to mark
3 this. Do we need to go back on to do it? I just
4 want the Judge to have both cards.

5 MR. PERSONIUS: No. Please. Give me that back. No.
6 No. Don't mark that. He doesn't get that, we
7 didn't use that.

8 MS. WISCHERATH: You brought it with you. We're
9 going to mark it.

10 MR. PERSONIUS: Please give it back to me. You don't
11 have permission to mark it. You don't have
12 permission to take my material.

13 MS. WISCHERATH: Can we go on the record?

14 MR. PERSONIUS: You don't have permission to do that,
15 that's ridiculous.

16 MS. WISCHERATH: Can we just go on the record?

17 MR. PERSONIUS: Jeepers. I've never seen that
18 happen, I've been practicing for forty-five
19 years. I've never had a lawyer come over and
20 grab something that was part of my file, never
21 had that happen before. Holy smokes.

22 THE VIDEOGRAPHER: Back on the record, time is
23 eleven-twenty.

1 MS. WISCHERATH: Prior to the break, there were two
2 note cards provided by Mr. Personius today that
3 had information to instruct the witness how to
4 answer, and the second one was on the table, and
5 earlier I indicated I'd like to mark it, and I
6 asked the court reporter to mark it, at which
7 time Mr. Personius refused to allow it to be
8 marked, and made a statement to the effect that
9 in all of his years of practicing, he's never
10 encountered someone trying to mark as an exhibit
11 a note card that was brought to a deposition to
12 instruct a witness how to answer.

13 MR. PERSONIUS: Let's --

14 MS. WISCHERATH: I would like to proceed with marking
15 that so the Court has it in its record, in the
16 event that whatever instruction on that note card
17 is later going to be brought up at a subsequent
18 deposition, we have already dealt with the issue.

19 MR. PERSONIUS: Are you finished?

20 MS. WISCHERATH: I believe that the note card
21 represented that I don't have personal knowledge
22 or something to that effect, and that was the --
23 a likely objection that we'll encounter if and

1 when we come back, and/or would like the Court to
2 deal with it in front of them now, rather than
3 have to make another motion relating to it later.

4 MR. PERSONIUS: Are you done?

5 MS. WISCHERATH: Yes.

6 MR. PERSONIUS: I have a different recollection of
7 what happened, and I think fortunately part of it
8 at least is captured on the record. There is a
9 second note card that I brought, and I'll read it
10 into the record. I have no personal knowledge
11 regarding this subject.

12 Before we took the break, Ms. Wischerath had
13 asked about that card, and I believe it's on the
14 record that I indicated I don't intend to use
15 that card, I don't think it's necessary. And
16 it's for that reason that I object to it being
17 marked here, but what I specifically objected to
18 wasn't the marking of the card, it was the fact
19 that Ms. Wischerath reached over into the area
20 where all my personal papers are related to this
21 deposition, and grabbed the card without my
22 permission, and over my objection, to insist that
23 it be marked. I've read it into the record, and

1 there was no need, absolutely no need to be
2 taking any paperwork from my private area, which
3 I've never had happen before. So that's the
4 reason for my objection.

5 MS. WISCHERATH: Were there any conversations on the
6 break about this with the witness while we were
7 breaking over the twenty minutes that --

8 MR. PERSONIUS: Why don't you ask either the
9 videographer or the court reporter about our
10 discussion about the Buffalo Bills and places to
11 get chicken wings, and chicken wing crawls, what
12 the weather is going to be like on Sunday, who's
13 going to tailgate. When you came in and I
14 jokingly said we were talking about you the whole
15 time, it was, trust me, a joke. We had zero
16 conversation, zero, about this issue in your
17 absence.

18 MS. WISCHERATH: Just wanted to clarify that.

19 MR. PERSONIUS: No. Ask the court reporter.

20 MS. WISCHERATH: I think we're done.

21 THE VIDEOGRAPHER: Going off record, time is
22 eleven-twenty-four.

23 * * * * *

1 I HEREBY CERTIFY that I have read the
2 foregoing 52 pages and that, except as to those
3 changes set forth in the attached errata form(s),
4 they are a true and accurate transcript of the
5 testimony given by me in the above-entitled
6 action on January 12, 2024.

7
8
9
10 -----
11 JOHN EVANS
12
13

14 Sworn to before me this

15
16 ----- day of ----- 2024.
17
18

19 -----
20 Notary Public.
21
22
23

1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4
5 I, Nichole Winans, a Notary Public in and
6 for the State of New York, County of Erie, DO
7 HEREBY CERTIFY that the testimony of JOHN EVANS
8 was taken down by me in a verbatim manner by
9 means of Machine Shorthand, on January 12, 2024.
10 That the testimony was then reduced into writing
11 under my direction. That the testimony was taken
12 to be used in the above-entitled action. That
13 the said deponent, before examination, was duly
14 sworn by me to testify to the truth, the whole
15 truth and nothing but the truth, relative to said
16 action.

17 I further CERTIFY that the above-described
18 transcript constitutes a true and accurate and
19 complete transcript of the testimony.

20
21 
22 _____
23 NICHOLE WINANS,
Notary Public.

ERRATA FORM

PAGE _____ LINE _____ CORRECTION: _____

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